

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SALINA MAYES

**COMPLAINT**

Plaintiff

vs.

UNITED STATES POSTAL SERVICE

Defendant

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Plaintiff, by her attorneys, LoTempio P.C. Law Group, as and for her Complaint against Defendant herein, alleges as follows, upon information and belief:

1. Plaintiff was and is a citizen of the United States of America and a resident of the State of New York, County of Erie, residing at 78 Brookdale Drive, Williamsville, New York.

2. The Court has jurisdiction by reason of §409(c) of Title 39 of the United States Code, and Chapter 171 of Title 28 of the United States Code known as the Federal Tort Claim Act.

3. This Court is the appropriate venue for this action pursuant to 28 U.S.C. §1402(b) given that this is the district in which the Plaintiff resides.

4. Defendant, UNITED STATES POSTAL SERVICE, is an independent agency of the executive branch of the United States government which, through its agents, servants and employees at all times hereinafter mentioned, did and does

operate a main Post Office located at 1200 William Street in the City of Buffalo, State of New York.

5. Pursuant to and in compliance with the statutes and regulations made and provided, including 28 U.S.C. §2675(a), 39 U.S.C. §912 and 28 U.S.C. §2401(b), Plaintiff filed an administrative claim for Plaintiff's conscious pain and suffering and economic damage, on April 9, 2018 and which was acknowledged received on or about that date with the federal agency out of whose activities the claims arose. A copy of the "Claim for Damage, Injury, or Death" filed on behalf of the Plaintiff, as well as the affidavit confirming service upon the United States Postal Service are annexed hereto collectively as **Exhibit "A."**

6. More than six months have elapsed since the Defendant, by and through said federal agency, was placed on notice of the administrative claims, and the United States Postal Service has failed to make a final disposition of the claim, and ultimately issued a denial of the claim by letter dated January 18, 2019, which was not sent by certified or registered mail. As a result, the failure to resolve the claim within six months is deemed a final denial pursuant to 28 U.S.C. §2675. A copy of the letter from the Postal Service is annexed hereto as **Exhibit "B"**.

7. That the within action is commenced within six (6) months of denial of Plaintiff's administrative claim.

8. Plaintiff has duly complied with all conditions precedent to commencement of this action.

9. On April 9, 2016 at approximately 10:50 a.m., the Plaintiff, SALINA MAYES, was operating her vehicle on N. Forest Road at the intersection of Maple

Road.

10. As the Plaintiff was waiting at the traffic light, her vehicle was rear-ended by a United States Postal Service vehicle being operated by a United States Postal Service employee, Lynne Mirco, in the course of her employment.

11. As a result of the aforementioned collision, the Plaintiff has sustained serious personal injuries, including, but not limited to, headaches, as well as neck and back injuries, resulting in her disability from employment subsequent to the date of the accident.

12. Lynne Mirco was an employee of Defendant United States Postal Service and was in the course of her employment at the time of the accident.

13. Lynne Mirco had the permission and consent of the Defendant to operate the aforementioned vehicle at the time of the herein accident.

14. The injuries sustained by the Plaintiff do qualify as a "serious injury" as defined by the Insurance Law of the State of New York.

15. The aforementioned accident was caused by the negligence and/or culpable conduct of the Defendant, its agents, servants and/or employees, without any contributory negligence on the part of the Plaintiff giving rise to the accident.

16. The Plaintiff has claimed damages in the amount of One Million Dollars for personal injuries sustained as a result of the aforementioned accident, and the Defendant has wholly failed to settle or otherwise compromise the Plaintiff's claim.

WHEREFORE, Plaintiff asks for an Order of this Court as follows:

a) Granting the Plaintiff judgment in the above-captioned matter in the total amount of One Million Dollars; and

b) For such other and further relief as this Court deems just and proper.

DATED: March 12, 2019

LoTEMPIO P.C. LAW GROUP

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